IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 300 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
P M DIESEL,PVT.LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR SN SOPARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 24/11/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following two questions under section 256(1) of the Income Tax Act,1961 (the Act) at the instance of the Commissioner of Income Tax, Rajkot.

> "[1] Whether the Appellate Tribunal is right in law and on facts in allowing the claims of the assessee in respect of production bonus amounting to Rs.7,32,449/- apart from the staff bonus which was allowed ?
>
> [2] Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to allow the discount on sales amounting to Rs.2,02,754/- holding the same not to be caught by the mischief of section 37(3A) ?"

2 The Assessment Year is 1985-86 and the relevant accounting period is the year ended on 30/6/1984. The assessee, a Private Limited Company made payment of Rs.7,32,449/- as production bonus to its workers and claimed the same to be deductible expenditure. The assessee Company had also made a claim amounting to Rs.2,02,754/- being the discount on sales. The Assessing Officer disallowed the claim for production bonus holding that the same was not in the nature of normal bonus covered by the Payment of Bonus Act. Similarly the claim of the assessee regarding discount paid was also disallowed by invoking provisions of Section 37(3A) of the Act. The Commissioner (Appeals) confirmed both the disallowances. However, the assessee succeeded before the Tribunal.

3 In relation to the payment of production

bonus, in the impugned order dated 27.10.1993, the Tribunal has recorded that (i) the payment was in pursuance of the agreement with the employees,(ii) the payment was for achieving production over and above the normally expected production,(iii) the production bonus had been quantified with reference to the extra production achieved, (iv) the production bonus was treated as part and parcel of regular wages for the purpose of Employees State Insurance Corporation and Provident Fund Contribution.

4 Mr.M.R.Bhatt, learned Standing Counsel appearing on behalf of the applicant-revenue has not been able to point out any facts or evidence to dislodge the aforesaid findings of facts. It is apparent that the Tribunal has recorded findings of facts which remain undisturbed. Once the payment has been treated as part and parcel of the wages, which are undisputedly allowed as

deduction by the revenue, same treatment is required to be given to the payment in question viz. production bonus of Rs.7,32,449/-.

5 Therefore, in absence of any infirmity in the impugned order of Tribunal question No.1 is required to be answered in the affirmative i.e. in favour of the assessee and against the revenue.

6 In relation to second question it was fairly accepted by Mr.Bhatt that the discount was in nature of reduction in the sale price. It was also pointed out that the legal position as regards the nature of items mentioned in Section 37(3A) read with Section 37(3B)(i) of the Act has already been enunciated by this Court in the judgement rendered in the case of Commissioner of Income Tax Vs. Zippers India, I.T.R.No.141 of 1994 decided on 5/10/2005.

7 Therefore, applying ratio of the aforesaid decision in case of CIT Vs. Zippers India, it cannot be stated that the discount allowed on sales of diesel engines worth Rs.2,02,754/- could be termed to be sales promotion within the meaning of Section 37(3A) read with Section 37(3B) of the Act. The Tribunal was therefore right in holding that the said payment of discount could not be termed to be expenditure for sales promotion. Question No.2 is therefore answered in the affirmative i.e. in favour of the assesee and against revenue.

8 Reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani,J)

m.m.bhatt